

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 1935**

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**Introduced by Assembly Member Bermudez  
(Coauthor: Assembly Member Matthews)**

February 1, 2006

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An act to amend Sections 765.5, ~~1231.1~~, 7604, and 7711 of, and to add Sections 1202.7, ~~2115.1~~, 7665, and 7711.1 to, the Public Utilities Code, relating to railroads, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1935, as amended, Bermudez. Railroads: maintenance and safety.

(1) The existing Federal Railroad Safety Act (FRSA) authorizes the Secretary of Transportation to prescribe regulations and issue orders for railroad safety and requires the Secretary of Homeland Security, when prescribing a security regulation or issuing a security order that affects the safety of railroad operations, to consult with the Secretary of Transportation. The FRSA provides for state participation in the enforcement of the safety regulations and orders issued by the Secretary of Transportation or Secretary of Homeland Security, pursuant to an annual certification, and authorizes the respective secretaries to make an agreement with a state to provide investigative and surveillance activities. The FRSA provides that to the extent practicable, laws, regulations, and orders related to railroad safety and security are required to be nationally uniform, but authorizes a state to

adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the state requirement. A state is additionally authorized to adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security, when necessary to eliminate or reduce an essentially local safety or security hazard, that is not incompatible with a federal law, regulation, or order, and that does not unreasonably burden interstate commerce.

Existing law requires the Public Utilities Commission to ~~inspect~~ *establish, by regulation, a minimum inspection standard to ensure the inspection of* railroad locomotives, equipment, and facilities located in class I railroad yards in California not less frequently than every 180 days, and ~~inspect the inspection of~~ all branch and main line track not less frequently than every 12 months.

This bill would require that the inspection of railroad locomotives, equipment, and facilities occur not less frequently than every 120 days, ~~and the inspection of branch and main line track occur not less frequently than every 6 months~~ *and commencing July 1, 2008, in addition to those minimum inspections, that the commission conduct focused inspections, as prescribed, of railroad yards and track, either in coordination with the Federal Railroad Administration, or as the commission determines to be necessary.*

(2) Existing law establishes the safety division of the commission. The safety division is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description, by rail.

This bill would require that existing automatic ~~grade-crossing~~ *grade-crossing* safety signal equipment that was installed within the previous 10 years that is removed pursuant to a specified provision of federal law, that the commission determines will meet the same performance criteria and inspection standards as new equipment, be made available for use at certain other crossings.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because this provision of ~~this~~ *the* bill would be a part of the act, the bill would impose a state-mandated local program by creating a new crime.

~~(3) Existing law requires the Department of Transportation to prepare and submit to the Governor a proposed budget and to include within the proposed budget, the portion of that budget that is to be funded from the State Highway Account. Existing law requires the Department of Transportation to set aside \$1,000,000 in each annual proposed budget, for allocation to the commission for the purpose of paying to the railroad or street railroad corporations the share of the costs to cities, counties, and cities and counties of maintaining automatic grade-crossing protection. Existing law authorizes the commission to recommend an amount greater than \$1,000,000 if this sum is not sufficient due to an increase in the number of grade-crossing protection devices, or increase in the cost of maintenance of those devices.~~

~~This bill would require the Department of Transportation to set aside \$4,000,000 in each annual proposed budget, for allocation to the commission for the purpose of paying to the railroad or street railroad corporations, the share of the costs to cities, counties, and cities and counties of maintaining automatic grade-crossing protection. The bill would authorize the commission to recommend an amount greater than \$4,000,000 if this sum is not sufficient due to an increase in the number of grade-crossing protection devices, or increase in the cost of maintenance of those devices.~~

~~(4) Existing law authorizes the commission, whenever the commission determines that a railroad corporation has violated any order of the commission concerning the adequacy, condition, or safety of the corporation's cars or tracks or any related fixture or appliance, to impose a fine for each violation or day a violation continues uncorrected.~~

~~This bill would require that the commission develop a citation process for violations subject to fines pursuant to this provision.~~

~~(5)–~~

(3) Pursuant to the FRSA, the Secretary of Transportation has adopted regulations to provide for safety at public highway-rail grade crossings, as defined, by requiring use of a locomotive horn, as defined, except in quiet zones, as defined, established and maintained in accordance with those regulations. These regulations expressly preempt any state law, rule, regulation, or order governing the

sounding of locomotive horns at public highway-rail grade crossings, but are not intended to affect, nor do they preempt, any state law, rule, regulation, or order governing the sounding of locomotive horns at private highway-rail grade crossings, as defined, or pedestrian crossings, as defined.

Existing state law requires locomotives to be equipped with a bell of specified weight or equivalent sound-producing capability and requires that the bell be sounded from a locomotive engine at least 1,320 feet before the intersection of the railroad and a street, road, or highway with certain exceptions. Existing law imposes a civil fine of \$100 on a railroad corporation that violates these provisions.

This bill would delete existing state law relative to the equipping and sounding of locomotive bells and would instead require that a ~~locomotive horn be sounded when a locomotive is approaching a public highway-rail grade~~ *bell, siren, horn, whistle, or similar audible warning device be sounded at any public crossing in accordance with the regulations adopted by the Secretary of Transportation, except in a quiet zone. The bill would additionally require that a locomotive horn be sounded when a locomotive is approaching a private highway-rail crossing or pedestrian crossing bell, siren, horn, whistle, or similar audible warning device be sounded at all rail crossings not subject to the requirements of the regulations adopted by the Secretary of Transportation, including private highway-rail grade crossings and pedestrian crossings, except in a quiet zone, in the same manner and circumstances that the locomotive horn would be required to be sounded when a locomotive is approaching a public highway-rail grade as required at a public crossing.* The bill would ~~authorize the sounding of a locomotive horn in an emergency or when appropriate to prevent imminent injury, death, or property damage, not restrict the sounding of a bell, siren, horn, whistle, or similar audible warning device in an emergency, or as otherwise authorized by federal regulation. The bill would authorize the commission to adopt rules for the sounding of audible warning devices at public highway-rail grade crossings, private highway-rail grade crossings, and pedestrian crossings for certain railroad and rapid transit operations that are excepted from the operation of the above-described requirements.~~ The bill would impose a civil penalty of \$2,500 for violation of these provisions.

(6)–

(4) Existing law requires the commission to require every railroad corporation operating in this state to develop, in consultation with, and with the approval of, the Office of Emergency Services, a protocol for rapid communications with that office, the Department of the California Highway Patrol, and designated county public safety agencies in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety. Existing law requires a railroad corporation to promptly notify the office, the department, and the public safety agencies, through a communication to the warning center of the office, if there is a runaway train or other uncontrolled train movement threatening public safety, in accordance with the developed communications protocol.

This bill would require the California Highway Patrol or a designated local public safety agency that responds to a railroad accident to report the accident to the Office of Emergency Services. By placing additional reporting requirements upon local public safety agencies, the bill would impose a state-mandated local program.

~~(7)–~~

(5) Existing law requires the commission to annually report to the Legislature on sites on railroad lines in the state that it finds to be hazardous, including a list of all commodities transported on railroad lines that could pose a hazard to the public or the environment in the event of a train derailment or other accident, a description of the quantities of these commodities, and the locations and routes that these materials are transported, and a list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous 5 years.

This bill would require the annual report to include a list of the root causes and significant contributing factors of all train accidents or derailments investigated.

The bill would require the commission to collect and analyze “near-miss” data generated from incidents occurring at railroad crossings and along the rail right-of-way, including data relative to runaway trains or any other uncontrolled train movements that threaten public health and safety reported to the commission pursuant to the bill.

~~(8)–~~

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(9)–

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 765.5 of the Public Utilities Code is  
2 amended to read:

3 765.5. (a) The purpose of this section is to provide that the  
4 commission takes all appropriate action necessary to ensure the  
5 safe operation of railroads in this state.

6 (b) The commission shall dedicate sufficient resources  
7 necessary to adequately carry out the State Participation Program  
8 for the regulation of rail transportation of hazardous materials as  
9 authorized by the Hazardous Material Transportation Uniform  
10 Safety Act of 1990 (P.L. 101-615).

11 (c) On or before July 1, 1992, the commission shall hire a  
12 minimum of six additional rail inspectors who are or shall  
13 become federally certified, consisting of three additional motive  
14 power and equipment inspectors, two signal inspectors, and one  
15 operating practices inspector, for the purpose of enforcing  
16 compliance by railroads operating in this state with state and  
17 federal safety regulations.

18 (d) On or before July 1, 1992, the commission shall establish,  
19 by regulation, a minimum inspection standard to ensure, at the  
20 time of inspection, that railroad locomotives, equipment, and  
21 facilities located in class I railroad yards in California will be  
22 inspected not less frequently than every 120 days, and inspection  
23 of all branch and main line track not less frequently than every  
24 ~~six months~~. 12 months.

1     (e) Commencing July 1, 2008, in addition to the minimum  
2     inspections undertaken pursuant to subdivision (d), the  
3     commission shall conduct focused inspections of railroad yards  
4     and track, either in coordination with the Federal Railroad  
5     Administration, or as the commission determines to be necessary.  
6     The focused inspection program shall target railroad yards and  
7     track that pose the greatest safety risk, based on inspection data,  
8     accident history, and rail traffic density.

9     SEC. 2. Section 1202.7 is added to the Public Utilities Code,  
10    to read:

11    1202.7. Whenever existing automatic ~~grade-crossing~~  
12    ~~grade-crossing~~ safety signal equipment that was installed within  
13    the previous 10 years is planned for removal due to upgrade or  
14    closure projects undertaken pursuant to Section 130 of Title 23 of  
15    the United States Code, and the commission determines that it  
16    will meet the same performance criteria and inspection standards  
17    as new equipment and therefore be safe to use, the signal  
18    equipment shall be made available to the following:

19    (a) With the consent of the participating railroad, to a state  
20    agency designated by the commission, for storage and potential  
21    use at a railroad crossing currently nominated by the commission  
22    for funding to eliminate hazards of railway-highway crossings  
23    pursuant to Section 130 of Title 23 of the United States Code.

24    (b) To other railroads for use at other railway-highway  
25    crossings within the state.

26    ~~SEC. 3. Section 1231.1 of the Public Utilities Code is~~  
27    ~~amended to read:~~

28    ~~1231.1. (a) In each annual proposed budget prepared by the~~  
29    ~~Department of Transportation under Section 165 of the Streets~~  
30    ~~and Highways Code, the sum of four million dollars (\$4,000,000)~~  
31    ~~shall be set aside for allocations to the commission for the~~  
32    ~~purpose of paying to the railroad or street railroad corporations~~  
33    ~~the share of the costs to cities, counties, and cities and counties of~~  
34    ~~maintaining automatic grade-crossing protection.~~

35    ~~(b) The commission may recommend a sum greater than four~~  
36    ~~million dollars (\$4,000,000) be set aside for allocations to the~~  
37    ~~commission for the purpose of making those payments, if the~~  
38    ~~commission finds that the sum of four million dollars~~  
39    ~~(\$4,000,000) is not sufficient due to an increase in the number of~~  
40    ~~grade-crossing protection devices, or increase in the cost of~~

1 maintenance of those devices. The specific amount of the total  
2 allocation shall be determined by the California Transportation  
3 Commission and shall constitute the amount necessary for that  
4 maintenance. In arriving at the amount, the California  
5 Transportation Commission shall consult with the commission.  
6 Payment shall be made on the basis of verified claims filed with  
7 the commission by the railroad or street railroad corporation  
8 responsible for maintenance of automatic grade-crossing  
9 protection. Any amounts not expended by the commission in any  
10 one fiscal year may be credited to subsequent annual allocations.

11 (e) Funds appropriated for the purposes of this section shall be  
12 available for allocation and expenditure without regard to fiscal  
13 years.

14 SEC. 4. Section 2115.1 is added to the Public Utilities Code,  
15 to read:

16 2115.1. The commission shall develop a citation process for  
17 violations of Section 2115.

18 SEC. 5.

19 SEC. 3. Section 7604 of the Public Utilities Code is amended  
20 to read:

21 7604. (a) For purposes of this section, the following terms  
22 have the following meanings:

23 (1) "Locomotive" means a piece of on-track equipment other  
24 than hi-rail, specialized maintenance, or other similar equipment  
25 with one or more propelling motors designed for moving other  
26 equipment, to carry freight, or carry passenger traffic, or without  
27 propelling motors, but with one or more control stands.

28 (2) "Locomotive horn" means a locomotive air horn, steam  
29 whistle, or similar audible warning device mounted on a  
30 locomotive or control cab car.

31 (3) "Pedestrian crossing" means a separate designated  
32 sidewalk or pathway where pedestrians, but not vehicles, cross  
33 railroad tracks. Sidewalk crossings contiguous with, or separate  
34 but adjacent to, public highway-rail grade crossings are part of  
35 the public highway-rail grade crossing and are not a "pedestrian  
36 crossing."

37 (4) "Private highway-rail crossing" means a highway-rail at  
38 grade crossing which is not a public highway-rail grade crossing.

39 (5) "Public highway-rail grade crossing" means a location  
40 where a public highway, road, or street, including associated



1 ~~sidewalks or pathways, crosses one or more railroad tracks at~~  
2 ~~grade. A crossing is a “public highway-rail grade crossing” if the~~  
3 ~~roadway on both sides of the crossing is maintained by the state,~~  
4 ~~a city, county, or city and county.~~

5 (6) ~~“Quiet zone” means a segment of a rail line, within which~~  
6 ~~is situated one or a number of consecutive public highway-rail~~  
7 ~~grade crossings, private highway-rail crossings, or pedestrian~~  
8 ~~crossings at which locomotive horns are not routinely sounded~~  
9 ~~consistent with Subpart C (commencing with Section 222.33) of~~  
10 ~~Part 222 of Title 49 of the Code of Federal Regulations.~~

11 (7) (A) ~~“Railroad” means any form of nonhighway ground~~  
12 ~~transportation that runs on rails or electromagnetic guideways~~  
13 ~~and any entity providing that transportation, including:~~

14 (i) ~~Commuter or other short-haul railroad passenger service in~~  
15 ~~a metropolitan or suburban area and commuter railroad service~~  
16 ~~that was operated by the Consolidated Rail Corporation on~~  
17 ~~January 1, 1979.~~

18 (ii) ~~High-speed ground transportation systems that connect~~  
19 ~~metropolitan areas, without regard to whether those systems use~~  
20 ~~new technologies not associated with traditional railroads.~~

21 (B) ~~“Railroad” does not include any of the following:~~

22 (i) ~~A railroad that exclusively operates freight trains only on~~  
23 ~~track that is not part of the general railroad system of~~  
24 ~~transportation.~~

25 (ii) ~~Passenger railroads that operate only on track that is not~~  
26 ~~part of the general railroad system of transportation and that~~  
27 ~~operate at a maximum speed of 15 miles per hour over public~~  
28 ~~highway-rail grade crossings.~~

29 (iii) ~~Rapid transit operations within an urban area that are not~~  
30 ~~connected to the general railroad system of transportation.~~

31 (b) ~~Except in a quiet zone, a locomotive horn shall be sounded~~  
32 ~~when a locomotive is approaching a public highway-rail grade~~  
33 ~~crossing in accordance with Section 222.21 of Title 49 of the~~  
34 ~~Code of Federal Regulations.~~

35 (c) ~~Except in a quiet zone, a locomotive horn shall be sounded~~  
36 ~~when a locomotive is approaching a private highway-rail~~  
37 ~~crossing or pedestrian crossing in the same manner and~~  
38 ~~circumstances that the locomotive horn would be required to be~~  
39 ~~sounded pursuant to subdivision (b).~~

~~(d) A locomotive horn may be sounded in an emergency when appropriate to prevent imminent injury, death, or property damage, or as otherwise authorized pursuant to Section 222.23 of Title 49 of the Code of Federal Regulations.~~

~~(e) Except as authorized in subdivision (d), a locomotive horn shall not be sounded in a designated or approved quiet zone.~~

~~(f) The commission may adopt rules for the sounding of audible warning devices at public highway-rail grade crossings, private highway-rail crossings, and pedestrian crossings that are applicable to any entity excluded from the definition of a "railroad" pursuant to subparagraph (B) of paragraph (7) of subdivision (a).~~

*7604. (a) (1) Except as provided in paragraph (3), a bell, siren, horn, whistle, or similar audible warning device shall be sounded at any public crossing in accordance with Section 222.21 of Title 49 of the Code of Federal Regulations.*

*(2) Except as provided in paragraph (3), a bell, siren, horn, whistle, or similar audible warning device shall be sounded, consistent with paragraph (1), at all rail crossings not subject to the requirements of Subpart B (commencing with Section 222.21) of Part 222 of Title 49 of the Code of Federal Regulations, including private highway-rail grade crossings and pedestrian crossings.*

*(3) A bell, siren, horn, whistle, or similar audible warning device shall not be sounded in those areas designated and approved by the Federal Railroad Administration as quiet zones pursuant to Subpart C (commencing with Section 222.33) of Part 222 of Title 49 of the Code of Federal Regulations.*

*(4) This section does not restrict the use of a bell, siren, horn, whistle, or similar audible warning device during an emergency or other situation authorized in Section 222.23 of Title 49 of the Code of Federal Regulations.*

~~(g)~~

*(b) Any railroad corporation violating this section shall be subject to a penalty of two thousand five hundred dollars (\$2,500) for every violation. The penalty may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the state. The corporation is also liable for all damages sustained by any person, and caused by its locomotives,*

1 train, or cars, when the provisions of this section are not  
2 complied with.

3 ~~SEC. 6.~~

4 *SEC. 4.* Section 7665 is added to the Public Utilities Code, to  
5 read:

6 7665. Whenever the *Department of the California Highway*  
7 Patrol or a designated local public safety agency responds to a  
8 railroad accident, the accident shall be reported to the Office of  
9 Emergency Services.

10 ~~SEC. 7.~~

11 *SEC. 5.* Section 7711 of the Public Utilities Code is amended  
12 to read:

13 7711. The commission shall annually report to the  
14 Legislature, on or before July 1, on sites on railroad lines in the  
15 state it finds to be hazardous. The report shall include, but not be  
16 limited to, information on all of the following:

17 (a) A list of all railroad derailment accident sites in the state on  
18 which accidents have occurred within at least the previous five  
19 years. The list shall describe the nature and probable causes of  
20 the accidents, if known, and shall indicate whether the accidents  
21 occurred at or near sites that the commission has determined,  
22 pursuant to subdivision (b), pose a local safety hazard.

23 (b) A list of all railroad sites in the state that the commission  
24 determines, pursuant to Section 20106 of Title 49 of the United  
25 States Code, pose a local safety hazard. The commission may  
26 submit in the annual report the list of railroad sites submitted in  
27 the immediate prior year annual report, and may amend or revise  
28 that list from the immediate prior year as necessary. Factors that  
29 the commission shall consider in determining a local safety  
30 hazard may include, but need not be limited to, all of the  
31 following:

32 (1) The severity of grade and curve of track.

33 (2) The value of special skills of train operators in negotiating  
34 the particular segment of railroad line.

35 (3) The value of special railroad equipment in negotiating the  
36 particular segment of railroad line.

37 (4) The types of commodities transported on or near the  
38 particular segment of railroad line.

39 (5) The hazard posed by the release of the commodity into the  
40 environment.

1 (6) The value of special railroad equipment in the process of  
2 safely loading, transporting, storing, or unloading potentially  
3 hazardous commodities.

4 (7) The proximity of railroad activity to human activity or  
5 sensitive environmental areas.

6 (8) A list of the root causes and significant contributing factors  
7 of all train accidents or derailments investigated.

8 (c) In determining which railroad sites pose a local safety  
9 hazard pursuant to subdivision (b), the commission shall consider  
10 the history of accidents at or near the sites. The commission shall  
11 not limit its determination to sites at which accidents have  
12 already occurred, but shall identify potentially hazardous sites  
13 based on the criteria enumerated in subdivision (b) and all other  
14 criteria that the commission determines influence railroad safety.  
15 The commission shall also consider whether any local safety  
16 hazards at railroad sites have been eliminated or sufficiently  
17 remediated to warrant removal of the site from the list required  
18 under subdivision (b).

19 ~~SEC. 8.~~

20 *SEC. 6.* Section 7711.1 is added to the Public Utilities Code,  
21 to read:

22 7711.1. The commission shall collect and analyze near-miss  
23 data generated from incidents occurring at railroad crossings and  
24 along the rail right-of-way. For purposes of this section,  
25 “near-miss” includes a runaway train or any other uncontrolled  
26 train movement that threatens public health and safety reported to  
27 the commission pursuant to Section 7661.

28 ~~SEC. 9.~~

29 *SEC. 7.* No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution for  
31 certain costs that may be incurred by a local agency or school  
32 district because, in that regard, this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the  
34 penalty for a crime or infraction, within the meaning of Section  
35 17556 of the Government Code, or changes the definition of a  
36 crime within the meaning of Section 6 of Article XIII B of the  
37 California Constitution.

38 However, if the Commission on State Mandates determines  
39 that this act contains other costs mandated by the state,  
40 reimbursement to local agencies and school districts for those

1 costs shall be made pursuant to Part 7 (commencing with Section  
2 17500) of Division 4 of Title 2 of the Government Code.

3 ~~SEC. 10.~~

4 *SEC. 8.* This act is an urgency statute necessary for the  
5 immediate preservation of the public peace, health, or safety  
6 within the meaning of Article IV of the Constitution and shall go  
7 into immediate effect. The facts constituting the necessity are:

8 Five train derailments have occurred in less than two years,  
9 three of them occurring in the span of one month. This is part of  
10 a disturbing trend across California. The number of train  
11 accidents has increased exponentially since 1997. In 1997, there  
12 were 105 train accidents. By 2003, there were 187. In 2005 the  
13 state was projected to have 228 train accidents. Because there is  
14 a need to resolve this problem now, in order to keep Californians  
15 safe, it is necessary that this act go into immediate effect.